Vemco, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (AW). Cases 7–CA–29122, 7–CA–29516, 7–CA–29674, 7–CA–29763, and 7–RC–19035

August 27, 1991

DECISION, ORDER, AND DIRECTION

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On September 11, 1990, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified,[3] and to adopt the recommended Order as modified.

1. The Respondent has excepted, inter alia, to the judge's finding that its decision to permanently lay off 60 employees on March 17, 1989, violated Section 8(a)(3) and (1) of the Act. For the following reasons, we find no merit to the Respondent's exceptions in this regard.

The Respondent began operations at its Grand Blanc, Michigan facility in August 1988. The Respondent admits that it knew of union organizing activity at its plant, first by the Teamsters and subsequently by the United Auto Workers (the Union), since at least October 1988.

Because of production problems, the Respondent's operations required significantly greater manpower than it had originally forecast. As the Respondent resolved those problems, the number of hours worked by its employees began to decrease.

On March 8, 1989,[4] the Respondent's management met to discuss a reduction in force. Vice President of Manufacturing A. James Schutz directed the Respondent's management to determine how many employees should be laid off in each department of the plant. According to Human Resources Manager Paula McIntyre, however, this number was not established until March 17, the date the layoffs were implemented.

In the interim, the Respondent had learned on March 13 that the Union was preparing a letter formally advising the Respondent of its organizing campaign. The next day, McIntyre directed her assistant to prepare a plantwide attendance report for use in the forthcoming layoffs, and expressed the hope that some of the employees with bad attendance were ''Union people.'' Later that same day, McIntyre met with Supervisors Marilyn Merandi, Ed Pomazanke, and Patricia Hatch to select specific employees for layoff, and directed them to think of anyone who was prounion or who had talked union outside of the plant.

The selection process continued through March 17. Employees Doug Hewitt, Ewell Hall, and Mike Harper, designated for layoff at 4:15 p.m. on March 17, were the last selected. On March 16, McIntyre told her assistant that 65 people would be laid off the next day and again expressed the hope that ''we'll get some of the union people.'' On March 17, after reviewing the final list, McIntyre told her assistant that it looked like they had done a good job, ''that we got most of the bad ones.'' Letters were sent to all 60 employees by certified mail on March 17, advising them that they had been permanently laid off due to lack of work and should not report to work the following Monday. Seventeen of these employees were identified as union supporters in the Union's letter, which was hand-delivered to the Respondent on March 17.

We find that the statements made by McIntyre, together with the unfair labor practices committed by the Respondent prior to March 17,[5] establish antiunion

[1] The Respondent's request for oral argument is denied, as the brief and exceptions adequately set forth the issues in this case. We also deny the Respondent's request for full Board consideration of this case.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 363 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also find no merit in the Respondent's allegations of bias and prejudice on the part of the judge. Thus, we perceive no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated a bias against the Respondent in his analysis or discussion of the evidence. Similarly, there is no basis for finding that bias and prejudice exist merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. *NLRB v. Pittsburgh Steamship Co*., 337 U.S. 656, 659 (1949).

In adopting the judge's findings we correct the following inadvertent errors: (1) the judge incorrectly referred to the Wednesday and Thursday prior to the March 17, 1989 layoffs as March 14 and 15—the correct dates are March 15 and 16, respectively; and (2) the judge erroneously stated that there were 292 unit employees on March 17, 1989. Including the employees laid off on that date, there was a total of 344 employees in the unit on April 29, 1989, of whom 187, a majority, had signed union authorization cards.

[3] We find it unnecessary to pass on the judge's finding that Supervisor Bard Scott's statement to an employee that ''its not a union shop and it never will be'' constituted an unlawful statement that union activity would be futile, the finding that team leader Joyce Skaggs' statements to employees during a team meeting unlawfully created the impression that union organization was futile or threatened an employee with job loss, or the finding that the Respondent's September 1989 ''Questions and Answers'' sheet distributed to employees constituted a grant of new benefits with regard to seniority and job posting rights. These findings are cumulative of other violations in this case and would not affect the remedy. However, for the reasons stated by the judge, the Questions and Answers sheet granted employees recall rights and advance notice for weekend overtime—benefits which they had not previously enjoyed—and hence constituted an unlawful grant of new benefits.

[4] Unless otherwise noted, all dates hereafter are in 1989.

[5] The judge found that Supervisor Merandi unlawfully threatened and interrogated employee Rodney Burnham in November 1988 by asking him if he knew about union activity in the shop and telling him the shop would shut down if the Union came in; that Supervisor Bard Scott, also in November 1988, told employees James Brenner and Lee Dickerson that they would be fired if management heard them talking about the Union; and that Supervisor

Continued

animus on the part of the Respondent.[6] Taking into account this evidence, the timing of the layoff relative to the progress of union activity at the plant, the haste with which the layoff was implemented, and the absence of evidence showing that the selections were based on a review of each employee's relative qualifications and performance, we find that the General Counsel has established a strong prima facie case that union activity was a motivating factor in the Respondent's decision to lay off the 60 employees. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Once the General Counsel establishes a prima facie case, the burden shifts to the Respondent to show that it would have taken the same action even in the absence of union considerations. In light of the General Counsel's strong prima facie showing of discrimination, the Respondent's burden here is substantial. *Eddyleon Chocolate Co*., 301 NLRB 887 (1991). For the reasons that follow, we agree with the judge that the Respondent has not met its burden.

In agreement with the judge, we find pretextual the Respondent's assertion that the March 17 layoffs were based on lack of work rather than union activity, consistent with a corporate goal established in mid-January of reducing staffing levels. In addition to the reasons cited by the judge, we note that, although the Respondent showed that production efficiencies had significantly reduced the man-hours required to maintain production levels, those efficiencies were largely in place by mid-January—i.e., 2 months before the layoffs were implemented. Moreover, between January and March, the Respondent added 12 new employees to its work force to replace employees who had terminated their employment. See *Alliance Rubber Co*., 286 NLRB 645, 647 (1987) (respondent hired two new employees during the month preceding unlawful layoff). Under these circumstances, we are not persuaded that the Respondent's layoff decision was based on lack of work.

We also agree with the judge that the Respondent has not shown that it retained surplus employees for 2 months because it hoped to obtain new business, and laid them off when its potential customer took its business elsewhere.[7] According to the Respondent, it began seeking contracts from two separate divisions of the Ford Motor Company—Tempo/Topaz and Thunderbird—in November 1988.[8] Ford representatives responsible for these contracts testified that no decision had been made either way with regard to awarding the work to the Respondent. According to Ford parts buyer Baker, the Respondent submitted a preliminary bid for the Tempo/Topaz work in early December 1988, and its sales representative submitted additional information on March 27, 1989—10 days after the layoffs were implemented. Baker also testified that Ford was still looking for vendors for this work in March 1989. This evidence belies the Respondent's contention that it learned, prior to March 18, that it was ''no longer in the running'' for the Tempo/Topaz contract.

Likewise, in November 1988, the Respondent and Ford initiated separate negotiations over possibly awarding certain Thunderbird part work to the Respondent. Ford representative Berggren testified that he received a preliminary cost estimate in November 1988, but that the Respondent did not reply to his January 1989 request for a firm cost estimate. Ford Paint Engineering Manager Teller testified that the Respondent submitted samples of its work on various occasions between October 1988 and February 1989. On February 13, Teller reviewed the Respondent's latest samples, found them acceptable from a quality standpoint, informed the Respondent of his conclusions, and suggested that they contact Berggren to discuss pricing.

Notwithstanding the foregoing, the Respondent did not contact Ford to continue the negotiations. To the contrary, its representatives did not respond to Teller's April inquiry concerning the Respondent's inaction and, in response to Teller's subsequent inquiry, advised him that the matter was ''water under the bridge.'' Although Ford did require the Respondent to return parts which it used in the trial runs, and declined to authorize a trial production run until a price had been agreed on, the record clearly shows that it remained interested in doing business with the Respondent on the Thunderbird contract.

Under these circumstances, we find that the Respondent has not shown that it would have permanently laid off the employees, even in the absence of union activity, because its efforts to obtain new business had been rejected. As previously stated, the Respondent's burden here is particularly heavy in light of the strong prima facie case established by the General Counsel. In light of the Respondent's surprisingly lackluster efforts in pursuing new business after February 1989, and the conflicts between its contentions and the Ford representatives' credited testimony, we find this explanation for its actions pretextual.

Hatch unlawfully interrogated an employee about her union activity on March 14 and, on March 15, unlawfully prohibited employees she supervised from discussing the Union while at the plant.

[6] In finding antiunion animus, we do not rely on the Respondent's communication to its employees of its generalized ''non-union'' philosophy contained in its handbook.

[7] The Respondent contends that the judge violated its due-process rights by finding that it failed to pursue new business for the purpose of discouraging union activity. We find no merit to this contention. Rather, the judge found pretextual the Respondent's reliance on this claim as an affirmative defense to the allegation that the layoffs were unlawfully motivated. We agree with the judge.

[8] We note that the Respondent also contends it was experiencing substantial difficulties with its production process at this time and required significant amounts of overtime to meet its existing contracts with General Motors. This contention would appear to be inconsistent with its claim that it sought the new business from Ford in order to avert the need for layoffs.

The Respondent also contends that a finding that the permanent layoffs were unlawful is fatally flawed in the absence of evidence that each laid-off employee was a union activist and that the Respondent had knowledge of this activity. We find no merit to this contention. As the Board has held, the fact that employees who did not support the union were laid off along with those who did does not detract from the General Counsel's strong prima facie showing of discrimination. *Eddyleon Chocolate*, above; *Alliance Rubber Co*., above; *Link Mfg. Co*., 281 NLRB 294, 299 fn. 8 (1986). In addition, we are not persuaded by the Respondent's claim that its selections were entirely based on neutral criteria. Thus, the Respondent has not shown that it considered equally the qualifications of all of its employees before the final selections were made. To the contrary, the record discloses that evaluations were filled out only for the 60 permanently laid-off employees—purporting to justify their selection for layoff. Moreover, the record shows that two of the three supervisors involved in the selection process, Marilyn Merandi and Patricia Hatch, were personally involved in the commission of other unfair labor practices by the Respondent.

Thus, in light of the strong evidence of antiunion animus and the pretextual nature of the Respondent's explanations for its decision to implement the layoffs, we find that its actions were a display of its economic power over its employees' jobs in response to the union activity at its plant. Accordingly, we find that the layoffs violated Section 8(a)(3) and (1) of the Act, as alleged. See *Eddyleon Chocolate Co*., above; *Link Mfg. Co*., above.[9]

2. We reverse the judge's finding that the Respondent violated Section 8(a)(1) of the Act by giving employees chits on August 3 that were redeemable for jackets bearing the Respondent's corporate logo. Contrary to the judge, we do not find that the timing of the chits' distribution evidences an intent to influence employees in the subsequent election. Thus, the Respondent announced its plan to give employees jackets in late 1988 and, on August 3, 2 days before an ''open house,'' gave employees chits which were redeemable for a jacket. These events occurred over 6 weeks before the election held on September 22.

We also find that the Respondent has adequately explained the delay from late 1988 until the chits were actually distributed in August 1989. The Respondent's testimonial and documentary evidence demonstrating the problems with its suppliers are not contradicted and were credited by the judge. Thus, the record shows that the Respondent distributed the chits as soon as its vendor difficulties had been straightened out and it was feasible to begin the distribution process. Even viewed in light of the Respondent's many other unfair labor practices, we find that under all the circumstances the distribution of the chits was not calculated to influence employees in their choice of a bargaining representative.

3. The Respondent also excepts to the finding that Vice President of Manufacturing Schutz' statement to employees on March 21 that he had heard from some employees that UAW supporters had intimidated employees into signing authorization cards unlawfully created an impression of surveillance.[10] We find merit to this exception, as such generalized statements, which are not directed at any particular employee's organizing activities, are insufficient to create the impression of surveillance, where, as here, there is no indication that the information about union activity was obtained in an unlawful manner. *La Reina, Inc*., 279 NLRB 791, 800 (1986). See also *Lab Glass Corp*., 296 NLRB 348, 354 (1989); *Rood Industries*, 278 NLRB 160, 164 (1986).

4. Finally, we reverse the judge's finding that an offer by two supervisors to trade their antiunion buttons for prounion buttons worn by employees violated the Act. The judge found that these actions constituted an unlawful interrogation of the employees concerning their union sentiments, citing *Houston Coca-Cola Bottling Co*., 256 NLRB 520 (1981). In that case, however, the employer offered antiunion buttons to employees whose sentiments were unknown. In contrast, the employees in the instant case wore prounion buttons proclaiming their views at the time they were approached by the supervisors. We further note that the employees involved testified that the offers were not accompanied by any threats or coercion. Under these circumstances, we see no basis for finding that the Respondent's actions constituted an unlawful interrogation.

5. We adopt the remaining 8(a)(1) violations found by the judge, for the reasons stated in his decision.

AMENDED REMEDY

For the reasons stated by the judge, we agree that a broad cease-and-desist order and a bargaining order are appropriate. Further, in the event a bargaining order takes effect without a certification of representative, for reasons set forth in the judge's decision we shall order that the election held in Case 7–RC–19035 be set aside, and that the petition in that matter be dismissed.

[9] Although we agree with the judge that the Respondent's layoffs violated the Act, we will not include in our Order the provisions recommended by the judge requiring the Respondent to provide the Union with 60 days' advance notice of any further layoffs and an opportunity to bargain over the decision and its effects, as these provisions would not effectuate the purposes of the Act.

[10] We also note that the judge erroneously stated at one point in his decision that the Respondent had engaged in surveillance of employees.

Nothing in our Order shall authorize or require the Respondent to rescind any benefits that have been conferred.

ORDER

The National Labor Relations Board orders that the Respondent, Vemco, Inc., Grand Blanc, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union sympathies and activities or those of other employees.

(b) Imposing an overly broad no-solicitation rule.

(c) Confiscating union literature.

(d) Threatening employees with plant closure, additional layoffs, discharge, reprimand, and the imposition of more onerous working conditions.

(e) Implying that efforts to join a Union would be futile.

(f) Soliciting grievances and promising or granting benefits in order to discourage union activities.

(g) Issuing warnings or suspensions, or otherwise discriminating against employees because of their activities in support of union affiliation for purposes of collective-bargaining representation or other protected concerted activities.

(h) Terminating or permanently laying off any employees or otherwise discriminating against them in retaliation for union activities or other protected concerted activities.

(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer the persons named below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any losses of earnings and benefits they may have suffered because of the discrimination against them, in accordance with the method set forth in the remedy section of the judge's decision:

Maxine Adams	Diane Johnston
John Beckman	Robert Jones
Virginia Black	Patricia LaFlame
Jeffrey Boyer	Randy Lefferts
Todd Chartrand	Marcia Mackey
Linda Neises	Arthur Lee Dickerson
Beatrice Ellis	Mary Parker
Shelly Glied	Sandra St. John
Todd Gualdoni	Evelyn Vaughn
Mike Harper	Jerry Wilder
Joy Johnson	Lois Badour
Kathy Jones	Joel Black
Bennett Lacey	Douglas Bohl
Terry Lawrence	Rodney Burnham
Joan McKenzie	Debbie DeSmet
Sallie Maness	James Dvorak
Karen Pack	Joseph Furden
Kelly Sheahan	Mary Greig
Gladennie Thomas	Theresa Hall
Dorrene White	Angela Hoskey
Thomas Alexander	Melanie Johnston
David Berta	Erika Kelsey
Julie Blackmer	Susan Larson
Sherry Browne	Ann Lockard
Victoria Coon	Kenneth Major
Timothy Donaldson	Gregory Nordberg
Steven Freel	Harold Patty
Vonda Goulette	Pam Stuhrberg
Ewell Hall	Karen Walker
Douglas Hewitt	Elizabeth Work

(b) Remove from its files any reference to the unlawful permanent layoffs and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(c) Make employee Greg Hall whole for any loss of earnings suffered as a result of his unlawful suspension and warning, in the manner set forth above, remove from its files any reference to the unlawful suspension and warning and notify him in writing that this has been done and that the suspension and warning will not be used against him in any way.

(d) On request, bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees employed by Respondent at its facility located at 10230 N. Holly Road, Grand Blanc, Michigan; but excluding office clerical employees, professional employees, confidential employees, sales employees, draftsmen, guards and supervisors as defined in the Act.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Grand Blanc, Michigan facility copies of the attached notice marked ''Appendix.''[11] Copies

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

IT IS FURTHER ORDERED that the challenges to the ballots of the following employees be overruled:

Maxine Adams	Joy Johnson
John Beckman	Robert Jones
Julie Blackmer	Patricia LaFlame
Victoria Coon	Ann Lockard
Timothy Donaldson	Kenneth Major
Steven Freel	Gregory Nordberg
Vonda Goulette	Kelly Sheahan
Ewell Hall	Gladennie Thomas
Angela Hoskey	Dorrene White
Kathy Jones	Lois Badour
Bennett Lacey	Virginia Black
Terry Lawrence	Sherry Browne
Marcia Mackey	Arthur Lee Dickerson
Linda Neises	Beatrice Ellis
Mary Parker	Shelly Glied
Pam Stuhrberg	Todd Gualdoni
Karen Walker	Douglas Hewitt
Elizabeth Work	Diane Johnston
Thomas Alexander	Erika Kelsey
Joel Black	Susan Larson
Douglas Bohl	Joan McKenzie
Debbie DeSmet	Sallie Maness
James Dvorak	Karen Pack
Joseph Furden	Sandra St. John
Mary Greig	Evelyn Vaughn
Mike Harper	Jerry Wilder

IT IS FURTHER ORDERED that Case 7–RC–19035 is severed from Cases 7–CA–29122, 7–CA–29516, 7–CA–29674, and 7–CA–29763, and that it is remanded to the Regional Director for Region 7 for action consistent with the Direction below.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 7 shall, within 14 days from the date of this decision, open and count the ballots of the employees listed above, and that he prepare and serve on the parties a revised tally.

If, after the preparation and service of the revised tally, the challenged ballots of the following additional employees prove determinative, the Regional Director shall designate a hearing officer to adduce additional evidence as to whether they were eligible voters: Lorraine Winget and Anthony Cicalo.[12] In the event of a hearing, the Regional Director shall subsequently prepare and serve on the parties a second revised tally.

If the final revised tally in this proceeding reveals that the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative. If, however, the revised tally shows that the Petitioner has not received a majority of the valid ballots cast, the Regional Director shall set aside the election, dismiss the petition, and vacate the proceedings in Case 7–RC–19035.

[12] The judge inadvertently failed to rule on the challenges to the ballots cast by these individuals.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate employees concerning their union sympathies and activities or those of other employees.

WE WILL NOT impose an overly broad no-solicitation rule.

WE WILL NOT confiscate union literature.

WE WILL NOT threaten employees with plant closure, additional layoffs, discharge, reprimand, and the imposition of more onerous working conditions.

WE WILL NOT imply that efforts to join a union would be futile.

WE WILL NOT solicit grievances and WE WILL NOT promise or grant benefits in order to discourage union activities.

WE WILL NOT issue warnings or suspensions, or otherwise discriminate against employees because of their activities in support of union affiliation for purposes of collective-bargaining representation or otherwise engaging in protected concerted activities.

WE WILL NOT terminate or permanently lay off any employees or otherwise discriminate against them in

retaliation for union activities or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer the persons named below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any losses they may have suffered as a result of our discrimination against them:

Maxine Adams	Joy Johnson
John Beckman	Robert Jones
Julie Blackmer	Patricia LaFlame
Victoria Coon	Ann Lockard
Timothy Donaldson	Kenneth Major
Steven Freel	Gregory Nordberg
Vonda Goulette	Kelly Sheahan
Ewell Hall	Gladennie Thomas
Angela Hoskey	Dorrene White
Kathy Jones	Lois Badour
Bennett Lacey	Virginia Black
Terry Lawrence	Sherry Browne
Marcia Mackey	Arthur Lee Dickerson
Linda Neises	Beatrice Ellis
Mary Parker	Shelly Glied
Pam Stuhrberg	Todd Gualdoni
Karen Walker	Douglas Hewitt
Elizabeth Work	Diane Johnston
Thomas Alexander	Erika Kelsey
Joel Black	Susan Larson
Douglas Bohl	Joan McKenzie
Debbie DeSmet	Sallie Maness
James Dvorak	Karen Pack
Joseph Furden	Sandra St. John
Mary Greig	Evelyn Vaughn
Mike Harper	Jerry Wilder

WE WILL remove from our files any reference to the permanent layoffs of the employees named above and notify them in writing that this has been done and that evidence of the unlawful layoffs will not be used against them in the future.

WE WILL make Greg Hall whole for the losses he incurred as a result of our discrimination against him.

WE WILL remove from our files any reference to the warning and suspension given to Greg Hall and notify him in writing that this has been done and that evidence of the unlawful warning and suspension will not be used against him in the future.

WE WILL recognize and, on request, bargain collectively with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time employees employed by Respondent at its facility located at 10230 N. Holly Road, Grand Blanc, Michigan; but excluding office clerical employees, professional employees, confidential employees, sales employees, draftsmen, guards and supervisors as defined in the Act.

VEMCO, INC.

P. Pennie Millender, Esq., Charles F. Morris, Esq., Theodore C. Niforos, Esq., Gary Saltzgiver, Esq., and *James Walter, Esq.*, for the General Counsel.

Sheryl Langhren, Esq. and *Francis Newton, Esq.*, of Detroit, Michigan, for the Respondent.

Betsey A. Engel, of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter initially was heard in Burton and Flint, Michigan, on July 17–21 and August 15–16, 1989. Subsequently, additional related matters arose and new complaints were issued and consolidated for further hearing. A further hearing was held in Burton and Lapeer, Michigan, on February 13–16 and March 26–29, 1990. Subsequent to several requests for an extension of the filing date, brief were filed by all parties.

The title proceeding is based on charges filed by the International Union, United Automobile, Aerospace and Agricultural Implement workers of America. The Regional Director's complaint dated May 17, 1989, alleges that the Respondent, Vemco, Inc., of Grand Blanc, Michigan, violated Section 8(a)(1) and (3) of the National Labor Relations Act by interrogating employees regarding union activities; threatening plant closure and discharge if employees elected to be represented by a labor organization; orally promulgating an overly broad no-solicitation rule and threatening employees with written reprimand based on the overly broad solicitation rule; creating the impression that employees' union activities were under surveillance; and terminating employees by means of a permanent layoff in retaliation for its employees activities in support of the Union. On August 15, 1989, at the close of the initial hearing, the complaint was amended to include two additional allegations of 8(a)(1) violation involving statements threatening employees with additional layoffs made by Respondent and its counsel.

On December 1, 1989, the Regional Director issued a report on challenged ballots and objections, an order consolidating unfair labor practice and representation case for hearing, and a notice of consolidated hearing in Cases 7–CA–29674, 7–CA–29763, and 7–RC–19035. The added complaints allege that Respondent again engaged in conduct violating Section 8(a)(1) and (3) of the Act by orally promulgating an overly broad no-solicitation rule prohibiting employees from speaking about the Union at anytime on the Respondent's premises; promising to give and distributing to employees jackets to dissuade them from supporting the Union; promising employees a system of job posting and soliciting grievances with a promise of benefits to dissuade em-

ployees from supporting the Union; threatening employees that Respondent would discharge employees who engage in activity in support of the Union; and issuing employee Greg Hall a 3-day suspension and a written warning in retaliation for his support of the Union.

On January 5, 1990, I issued an order granting motions to reopen record and to consolidate cases and scheduling continued hearings in Cases 7–CA–29122, 7–CA–29516, 7–CA–29674, 7–CA–29763, and 7–RC–19035 and the hearing was continued until its conclusion on March 29, 1990.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the manufacture, sale, and distribution of automotive parts at its Grand Blanc facility and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside Michigan. It admits that at all times material it has been an employer in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Vemco is an acronym which stands for ''Venture Exterior Molding Company.'' It was incorporated in April 1987 and began construction of a 290,000 square foot manufacturing facility fitted with state-of-the-art equipment and systems specifically designed to produce large exterior injection moulded plastic car parts which require sophisticated painting and assembly operations.

Vemco is owned by Venture Holdings which also owns the stock of several related corporations, including Venture Mold and Engineering, and Venture Industries (Venture). All the related companies are involved in production and sales to the automotive industry and Venture and Vemco are controlled by a common president, Larry Winget, have a common vice president of finance and administration, Michael Torakis, and vice president of manufacturing, A. James Schutz. Schutz is the principal day-to-day manager of the Vemco facility. They have common policies set by Winget, Torakis, and Schutz which include nearly identical employee handbooks.

Vemco began hiring production employees in April 1988, and its first products were shipped August 22, 1988, to the BOC (Buick Oldsmobile Cadillac) Division of General Motors. The latter company is its only customer; however, it has sought other business, including that of Ford Motor Company. As is common in the automotive industry, production of component parts is tied into a highly coordinated schedule of manufacture and shipment attuned to directly supply General Motor's assembly lines within closely timed requirements. In planning its personnel requirement, Vemco estimated that it would employ approximately 180 direct labor personnel and 90 support personnel for a total of 270 employees. This estimate proved to be inaccurate and, in order to meet production demands, extensive overtime was required of employees and employment levels were increased and reached 332 as of November 2, 1988. These added positions including an additional 40 laborers in the paint department (and 23 indirect or support personnel) and the total number of employees rose to 350 prior to March 1989. Respondent attributes the higher staffer level to major systems defects and startup problems which resulted in production delays and defects and the necessary labor intensive reworking of parts.

Respondent so-called ''molding plant'' (department) is an area within the overall structure which produces fascia (wraparound front and rear bumpers) and cladding (the decorative 13-inch side strips below the body paneling). Products move from this initial production area to the ''paint plant'' and then to the ''assembly plant'' where minor components are attached and the product is inspected, prepared for shipment, and warehoused or held in short-term inventory for sequences shipment to the customer. During the fall of 1988 employees regularly worked 10-to-12 hour days and 6-to-7 day weeks, a practice which generated increasing complaints about the excessive hours. The cladding line ran two shifts from August 1988 through May 1989, and in mid-December a second shift was added to the fascia line. Hiring for the second shift began before the second shift was put into effect and the additional people were added to the first shift as an overload, initially, to train the new hires. This situation never developed into two complete separate shifts and the two shifts always overlapped 3 or 4 hours, depending on production needs.

Betty Harrison is an international representative for the Union with duties which include assisting workers who are interested in union representation. In late September 1988, she received several calls from Respondent's employees (including John Beckman and Janet Gerow). A meeting was held on October 3 at a restaurant in Grand Blanc with approximately 50 Vemco employees. A second meeting was held 2 weeks later and further organizational activities were planned. Organizational activity picked up in January 1989 and weekly meetings with employees were held through March, generally, at the Union's regional office. These initial activities culminated in Harrison's preparation of a letter of written notice of the campaign. This letter identified 50 employees and was hand delivered to Respondent's receptionist by Harrison at 2:30 p.m. on Friday, March 17.

Harrison initially had intended to notify the Respondent of the union committee on Monday, March 20, after a union-employee meeting that was scheduled for March 19, however, she delivered the letter on Friday after being informed the previous day that an employee had information that the Company was aware of the planned union letter and was going to take some action Friday to beat her to the punch.

Debbie Reed is a human resource department assistant and works under the direct supervision of Department Manager Paula McIntyre. When Reed reported to work at 8 a.m. on March 17, she observed McIntyre meeting with Line Supervisors Ed Pomazanke, Pat Hatch, Gine Watson, and Marilyn Merandi and discussing employees that were to be laid off. On the afternoon of March 16 McIntyre had returned from a meeting and told Reed that the layoffs would occur the next day. Reed asked if it was because the union letter was coming and McIntyre said, ''No, that originally it was planned for the next week but they were just moving the date up.''

At 1:15 p.m., McIntyre asked Reed to move into employee Crystal Portu-Villireal's cubicle where others could not see what they were doing and they begin typing layoff notices and envelopes from a layoff manpower report and filling out certified mail receipts. At 4:15 p.m. McIntyre added the names of Doug Hewitt, Ewell Hall, and Mike Harper (all from the molding plant). The layoff was completed at 4:30 p.m., and as Reed prepared to go to the post office McIntyre told them ''she thought we had done a good job, that we got most of the bad ones.''

On Monday, March 20, Reed was in McIntyre's office when McIntyre showed her the Union's letter. As McIntyre reviewed it, she mentioned some names on the list, specifically that of Vicki Coon, one of the persons laid off.

The termination letter gave no advance notice but said ''that as of the end of your shift on Friday, March 17, 1989, your employment with Vemco, Inc. will be terminated, as a result of a permanent layoff.'' It was sent to 60 employees, all but 12 of whom had more than 90 days of employment. Respondent's total work force on that date was approximately 350 employees. This mass termination took place against a background of a lengthy and clear awareness by all levels of Respondent's management that a union organizing campaign was underway at its facility. For example, Vice President of Finance and Administration Torakis acknowledged that he was informed of the campaign by the personnel director and other plant managers as far back as October 1988.

Respondent's philosophy regarding unions is openly acknowledged and is specifically addressed in the company handbook in a section entitled ''Non-union philosophy.'' This handbook is distributed to every Vemco employee with a specific explanation of the nonunion philosophy during each new employee's orientation.

In addition to this direct communication to employees of its philosophy, the Respondent also engaged in a number of actions during the initial union campaign between October 1988 and the mass termination on March 17, that are shown to have been violations of Section 8(a)(1) of the Act.

During the course of the initial hearing in July 1989, the Respondent issued a press release, made statements at a news conference, and thereafter distributed a letter to employees in which it reiterated the same essential message set forth in the letter from Executive Vice President Schutz, which states:

> If the Union gets its way and Vemco is required to hire back 60 of those people, the answer seems to be one of two alternatives. Since we do not have enough work for an additional 60 people on a full-time basis either (1) we could try to keep everyone employed—working 3 or maybe 4 days per week, or (2) another layoff would be made out of our present work force. And even though this presents problems, since many of our people have common dates of hire, the Union would want us to do this by seniority and that is probably what we would have to do.

This letter was sent on July 27, shortly after the Union filed a representation petition on July 13. In response to the petition, the Board scheduled and held an election on September 22. Prior to and on the day of the election, the Respondent continued to engage in numerous acts, discussed below, which also demonstrate unfair labor practices that illegally interfered with the election process and employee rights under Section 7 of the Act.

The election resulted in a vote of 141 ballots against the Union, 1 void ballot, 127 in favor of the Union, and 54 challenged ballots, 52 of which were cast by employees terminated by Respondent's March 17 letter.

Shortly after the election, employee Greg Hall, a vocal union supporter, was written up and suspended for 3 days for falsifying his timesheet on September 17, an action which followed statements by Supervisor Randy Porter that ''they would make an example'' of Hall after the union bid was over.

The parties stipulated that the appropriate bargaining unit is set forth in the complaint. Otherwise, a review of Respondent's list of names of the employees and other documentation shows that out of 292 employees, as of April 29, 1989, 187 previously had signed union authorization cards.

III. DISCUSSION

The primary event effecting these proceedings was the sudden termination of 60 employees. This occurred during an ongoing union organizational campaign, it was accompanied by a number of acts of company interference with the Section 7 rights of employees and it essentially resulted in a failure of the Union to receive a majority of the votes cast by the remaining employees.

A. *Credibility*

The Respondent's witnesses, with occasional inconsistences, generally testified that various managerial or economic reasons dictated their actions during the several months prior to the layoff and they assert an absence of antiunion motivation. This testimony, however, must be evaluated against what I find to be a prima facie showing of antiunion motivation, against specific, contradictory testimony by several of the General Counsel's witnesses, and against a pattern of disregard for employee's rights.

The testimony by Human Resources Assistant Debbie Reed is keystone to the General Counsel's presentation. Reed, as assistant to and a social friend of Manager McIntyre, was in a unique position to hear and observe ongoing events. Moreover, she was a close social friend of union activist Greg Hall and she played an apparent unwitting role in the disclosure of some information between both the Company and the Union. At the time of Reed's testimony, her close relationship with Hall had ended and she remained as an office employee, unconnected with bargaining unit employees. Otherwise, I find that Reed testified with a highly believable demeanor and was especially candid and forthright.

Reed testified that McIntyre called her at home shortly before the start of the hearing on July 17, after Reed had been interviewed by General Counsel Walter. McIntyre apologized for some abruptness to Reed at the office concerning her interview with Walter and said that ''she knew that I had to tell the truth and tell—and do the right thing that was in my heart'' and ''that I had to understand that she knew I had to do what I had to do, but she had to do what she had to do, too, which, if it meant if it—meant lying for the com-

pany she would have to do that.'' McIntyre then added that ''she was going to have to lie her tits off.''

McIntyre testified that:

> I had called her to tell her that, basically, it's unfortunate that both of us are in this situation; that all this has taken place over the last three months; that she should not worry; that basically it might seem like I'm going to be up on this stand lying my tits off.

McIntyre further explained her remarks by saying ''[b]asically, I left that conversation trying to make light of the situation, trying to tell Debbie not to worry about it, and told her that when all this is over, we'll go out and have a couple beers and we'll relax.'' She then was asked by Respondent's counsel: ''Did you, at any time, tell Debbie Reed that you were going to lie when you took the stand?'' to which she replied, ''No, I did not.''

Here, I evaluate McIntyre's testimony as being generally candid, however, I also find that she has chosen to selectively qualify or slant her testimony to enhance deniability of facts indicative of antiunion motivation by Respondent or its supervisors. I also note that McIntyre's statement to Reed might reasonably be seen as an effort to persuade Reed that the ''right thing'' might be to get the situation over in such a way that Reed would be more supportive of the Company's position and McIntyre's view of events. Here, I am persuaded that Reed's testimony is the most believable. I do not credit McIntyre's testimony that she qualified her remark to Reed by saying ''it might seem'' like she was lying. I therefore credit Reed's testimony that McIntyre candidly stated that she ''would'' and ''was going'' to ''lie'' for the Company.

Under these circumstances, I fully credit Reed's overall description of the events she observed in connection with the layoffs of March 13 and I discredit any testimony to the contrary by McIntyre or other company officials.

I also specifically credit the testimony of several witness-employees of Ford Motor Company who independently and objectively described their participation in events pertaining to the possibility of Ford's bringing added production requirements to Respondent in the period prior to the layoffs. Accordingly, as further discussed below, I reject the testimony or implications of Respondent's managers that conflicts with that of the Ford witnesses.

Otherwise, the following recitation of affirmative statement of facts are my factual conclusions based on the demeanor of the various witnesses and my evaluation of the most credible testimony. Accordingly, in instances where testimony to the contrary has been placed in the record but not set forth in detail, I have reviewed such testimony but found it to be implausible or incredible and, unless such testimony is otherwise further discussed in order to aid in the reading of the decision, it will not be repeated.

B. *Terminations of March 17*

In a discharge case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected concerted activities were a motivating factor in the employer's decision to terminate the employee. Here, the record shows that Respondent's management was well aware of union activity at the plant dating back to October 1988, as shown by the acknowledgment by Vice President Torakis that he had been so informed by various managers and the personnel director. It also is well established that the Respondent makes a specific point of informing all employees of its handbook documented, nonunion philosophy. This and the Company's willingness to engage in unfair labor practices as demonstrated elsewhere in this decision are sufficient to warrant a finding that antiunion animus has been established.

Vice President Torakis testified that Vice President Schutz called him on Friday, March 17, around 5 p.m., and told him that Betty Harrison from the Union had delivered a letter to the receptionist that had been passed on to him.

Debbie Reed learned about the union drive in February 1989 from employee Greg Hall. (Reed and Hall were going with one another at that time but had ceased doing so at the time of the hearing in July and August.) On one occasion Reed was present when Supervisor Mike Grady spoke to Human Resource Manager McIntyre at her desk about an employee that was denied admittance to a union meeting. Later, McIntyre spoke to that person and then told Reed that he was upset because the Union considered him to be a manager. Shortly thereafter, Supervisor Marilyn Merandi brought employee Maureen Owen to McIntyre's office. Owen was asked if she would be willing to go to a Union meeting. Owen replied she did not care, she could go, however, later that afternoon McIntyre called Owen back and told her she was just kidding and that Owen did not have to go to the meeting. Later, on March 12 Reed was told by Hall at her home that the Union was going to give a letter to the Company about the union campaign, and on Monday, March 13, she told McIntyre about it. McIntyre asked her if she knew when and she replied, ''no.'' She then asked Hall and was told it would be Friday or Monday and she told McIntyre Tuesday morning. When McIntyre asked if she knew the names on the letter she replied, ''no.'' On Wednesday, March 14, McIntyre returned from a meeting and told Reed to run an attendance report on the people in the plant, explaining that there was going to be a layoff and she wanted to highlight people with bad attendance. As Reed prepared the review, she told McIntyre there were a lot of people with bad attendance and McIntyre said she ''hoped some of them were Union people.'' Later that afternoon McIntyre and Reed met with Supervisors Marilyn Merandi, Ed Pomazanke, and Patricia Hatch of assembly, paint, and the masking room, respectively, and told them of the layoff, that Reed was getting the attendance records, that they would get together to discuss what people to layoff, and that she wanted them to think of anybody who was prounion or who had talked union outside of the plant.

On Thursday, March 16, McIntyre returned from a meeting and told Reed they had a big job ahead, that 65 people were going to be laid off the next day and ''hopefully we'll get some of the union people,'' when Reed asked if it was because of the letter expected on Friday, McIntyre replied,''No, that originally it was planned for the next week but they were just moving the date up.'' Thereafter, McIntyre told Reed they had to tell payroll clerk Joan Wilson and receptionist Bobbie Clifton that they were not to pick up any certified mail from the post office or sign for anything that came to the window.

When she arrived on Friday, March 16, Reed observed Supervisors Merandi, Pomazanke, Hatch, and Gine Watson with McIntyre discussing persons to be laid off. At 1:15 p.m., Reed and another employee began covertly typing layoff notices and envelopes from a layoff manpower report and filling out certified mail receipts. At 4:15 p.m., McIntyre added the names of Dough Hewitt, Ewell Hall, and Mike Harper (all from the molding plant). The layoffs were completed at 4:30 p.m., and as Reed was preparing to go to the post office, McIntyre told them ''she thought we had done a good job, that we got most of the bad ones.''

Under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that union activities were a motivating factor in Respondent's decision to terminate 60 employees on March 17. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in right *Wright Line*, 251 NLRB 1083 (1980); see *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent's defense is based on a contention that it became overstaffed because of major startup problems and that when these were resolved and additional work for another customer was not obtained it had a 17-percent labor surplus and that it then eliminated the excessive staff for these economic reasons only.

My review of the record leads to the conclusion that Respondent's reasons are pretextual in the context of how and when its reduction in staff occurred. Moreover, I also find that some of the persons chosen for termination were selected because of their support for the Union.

The crucial facts show that the Respondent did not plan to implement any layoff to be effective on or before March 17. It was only after learning of the Union's plan to send it a letter (which would identify union supporters and tend to offer them some degree of legal protection against retaliation), that it decided to hasten its consideration of an ongoing business review of staffing levels and to move up the date of its action in an attempt to ''out maneuver'' the Union in its bid to secure the support of a majority of the Company's employees. The ultimate and crucial conclusion here is that the layoff of 60 employees would not have occurred on March 17 were it not for Respondent's antiunion animus and its motivation to preempt the possible effect of the Union's notification letter to the Company. Clearly, Human Resources manager McIntyre went to several meetings with company officials and was privy to at least some of the decisions that were effected during the days preceding the layoffs. She testified that layoffs were not discussed ''officially'' with her until a March 8 meeting with Schutz. Thereafter, she had expected the layoff not to occur until at least the week after March 17. At the March 8 meeting Schutz said they were ''considering a layoff'' and the manager should review their levels and come up with numbers in regards to cutting the work force.

Respondent argues that the layoffs were necessitated because of insufficient work, overstaffing, and loss of an expected contract with Ford Motor Company for additional work. It was stipulated that the employees were working long hours prior to the hiring of new employees to implement a second facia line shift on December 10, 1988, however, long hours continued and additional new employees were hired. In fact, 12 employees were hired after mid-January, Respondent asserts that quality improvements and productively gains started to appear in January and February and that a 4-day workweek was implemented on both facia line shifts.

One particular element of the Respondent's defense is that it maintained staffing levels at a unnecessarily high level after the start of the year because it anticipated receiving added work from Ford and that the layoffs occurred only after it failed to receive this work (which involved painting of facia to be supplied by Ford for a car then under production).

Schutz asserted that the second shift was added in December as a culmination of ongoing discussions with Ford, that Respondent had been running trial product for Ford and that the work force was expanded in December based on a 30-day production estimate given to Ford in late November. He disavowed that Vemco had any indication that it would not be granted the contract and asserted that award of the contract was a ''real'' or ''good possibility,'' Schutz indicated that it was not until the end of February 1989, that he became aware that Vemco would not be awarded the Ford work. Vice President Torakis indicated that the Ford contract remained an opportunity until the first week of March and that this additional work would have supported approximately 50–55 employees.

Ford Representative Charles Baker testified that he first met with Schutz and Hunter McDonald, a Vemco sales representative, on November 2, 1988, regarding a possible contract for assembly and painting of facia for Ford vehicles. Several facia were shipped to Vemco in November for a trial run, a timetable of production was discussed, and he was informed that additional personnel would have to be hired to establish an afternoon shift. In December, Vemco submitted cost estimates which were referred to and reviewed by the purchasing and controller's offices at Ford.

During this time, the quality of Vemco's trial product runs was being monitored by Spence Teller, the engineering manager at Ford Utica trim plant. By February 13, 1989, Teller determined that Vemco was fully capable of supplying parts meeting Ford's standard of quality and it was simply a matter of working out the economics. As trial product runs were no longer necessary, he requested that Vemco return the fixtures and parts that had been loaned to Vemco for the trial run; Teller asserted that no representations were made to Vemco that this act in any way indicated that it would not be granted the work.

During January 1989, however, Manager of Industrial Engineering Richard Berggren at Ford's Utica plant, contacted Vemco for an updated cost estimate. He spoke to McDonald, who assured him that Vemco would submit an updated quote ''as soon as possible,'' however, no updated quote was ever received (Berggren indicated that any such information would have passed through his hands), and he received no further communication from Vemco after January 1989.

Baker corroborated that following the initial estimate submitted by Vemco in early December 1988, no other bid or economic negotiations were pursued by Vemco until ''the last week of March 1989,'' just after the layoffs.

Under these circumstances, I conclude that Respondent made a decision in early 1989 not to pursue the Ford business for otherwise unexplained reasons. I further conclude that its assertion that it learned that it would not receive the Ford business in late February or early March, because of a decision by Ford, is false. Accordingly, Respondent's assertion that the loss of the Ford business precipitated the economic necessity of the layoff is also false.

The Respondent advances economic related information and explanations regarding production, quality, staffing levels, etc., to rationalize why some 17 percent of its work force needed to be immediately terminated; these explanations, however, do nothing to overcome the otherwise clearly persuasive showing by the General Counsel that Respondent and its managers intended to and did falsely represent its actions regarding the factors discussed immediately above, factors that are considered to be determinative of the conclusion to be reached on this layoff allegation.

Accordingly, I specifically find that Respondent's false and pretextual explanation regarding the potential Ford business supports an inference that the real reason for the mass layoff and termination on March 17 (as well as the reason for not pursuing the contract) was the growth of union activity and a desire to preempt and interfere with the Union's legitimate organizational action of presenting notification to the Company.

This conclusion is supported and reinforced by a number of other factors, most significantly the timing of the action. Not only was the layoff decision and its execution directly related to information the Respondent received about the Union's letter, it was rushed to fruition in a failed attempt to act before the union letter was received, with absolutely no prior notice whatsoever to employees (certified mail sent after 5 p.m. on Friday informed employees that the termination had occurred and that they should not come back on Monday). Inasmuch as Vemco was a new company, it had no history of prior layoffs. It is shown, however, that in one meeting Vice President Schutz' suggestion that there be staggered or phased layoffs, however, he was overruled by Owner Wingate and Vice President Torakis. It also is noted that Respondent choice to describe the layoff as ''permanent'' and to notify the employees that they were terminated, actions that appears to be inconsistent with its assertion that it was trying to gain new business. It also is inconsistent with the fact that no employees, especially those hired in and after December 1988, to supplement the initial hires, were ever told that their jobs were temporary.

As noted, 17 of the 60 terminated employees (61 were terminated but one person learned of his fate and, with the intervention of a manager was reinstated) were named on the Union's list. Significantly, Ewell Hall and Mike Harper were on the list and were 2 of the 3 names added to the termination list at 4:15 p.m. on March 17.

Although the Respondent asserts that it established an objective criteria for selection of persons for termination, it appears that attendance was made a singularly significant criteria, even to the extreme of selecting persons with absences because of serious medical problems and operations.

Initiative, job knowledge and work quality were other criteria, yet Respondent had made no evaluations of these factors prior to March 15, except in the masking department, where Manager Hatch had personally prepared written performance evaluations. In a conversation between Reed and McIntyre a few days after the layoff. McIntyre said, ''The only thing that could hurt us is Pat Hatch's evaluations.'' Reed said ''why'' and McIntyre responded, ''because she did good evaluations on all her people.'' Shortly after the layoffs, employee Vicki Coon's asked for a copy but it was not in her file and when McIntyre was asked for it she said that they were all ''stolen'' from Hatch's office.

Here, I also conclude that the criteria, ''cooperation,'' may be inferred to be a euphemism for determining whether an employee had a procompany or prounion attitude. It was objective only to the extent that persons with prounion sympathies could be identified to satisfy Manager McIntyre specifically expressed hope that some of those with bad attendance were Union people, inasmuch as McIntyre specifically told Managers Merandi, Pomazanke, and Hatch to prepare for discussing persons to lay off by thinking of ''anybody who was prounion or who had talked union outside of the plant and after the layoff letters were sent she expressed her pleasure that ''we got most of the bad ones.''

Several of the Respondent's supervisors did testify regarding their asserted reasons for selecting a few of the individuals, generally giving criticism of employee attitude and absenteeism problems. However, no comprehensive review of the majority of laid-off employees was made and no documentation of the reasons was placed into evidence. Moreover, no individual's letter of termination made reference to any deficient behavior.

In any event, the record here presents a situation in which the unfair labor practice is based on the mass layoff and not individual actions. Accordingly, there is no obligation for the General Counsel to show that each singular laid-off employee was involved in union activity and that each singular laid-off employee had a blameless employment record. Here, the criticized discriminatees were not disciplined previously because of any problem behavior and I find that none of these employees would have been permanently laid off on March 17 were it not for Respondent's illegally motivated decision to immediately implement a reduction of staffing levels.

In this connection, it is noted that the Respondent otherwise makes much of its program of shift representatives as a ''bridge'' between management and employees. However, it did not utilize the shift representative process for communication or exchange of information or plans for the need for layoffs or for other adjustment in the workweek, or the method by which employees would be selected for layoff. Although Respondent was under no obligation to bargain with the shift representatives about the layoffs, its failure to utilize a process apparently designed for such a purpose further supports the inference that the layoffs were for discriminatory reasons.

Finally, this sudden, mass layoff occurred in the context of several demonstrated violations of the Act, discussed below, which unlawfully interfered with employees' Section 7 rights. The layoffs also were bluntly communicated in terms of ''terminated as a result of a permanent layoff,'' rather than a mere layoff, where employees could expect the possibility of recall, especially since the termination letter also referred to ''forecast additional sales that would provide work to support the current work force had not occurred and were now unlikely.'' And, inconsistent with this prediction,

Respondent again began pursuing Ford work at the end of March. If the permanent layoffs were otherwise legitimate, those who were terminated would not have the right to vote in any forthcoming representation election and, in view of the antiunion animus otherwise shown, I infer that the layoffs were made permanent rather than temporary for discriminating reasons, a finding which further refutes Respondent's asserted nondiscriminatory rational for its action.

Under all these circumstances, I find that Respondent would not have permanently laid off 60 employees on March 17 were it not for the union organizational drive and activities related thereto and I find that Respondent has failed to meet its burden of showing that the layoff was not motivated by the illegal and discriminatory reasons demonstrated by the General Counsel, as discussed above. I therefore conclude that the General Counsel has met his overall burden and shown that Respondent violated Section 8(a)(3) of the Act as alleged in the complaint.

C. *Alleged Prelayoff Violation of Section 8(a)(1)*

1. Employee shift representative committee

In October 1988, subsequent to the employees first meeting with Union Business Representative Harrison on October 3, Vemco established an employee shift representative committee of employees elected by their fellow workers.

Schutz called the first committee meeting in late October, in which he explained to the representatives that it was their purpose to act as liaisons between management and the employees and expressed a desire to work together with the employees in order to solve any problems. (Subsequently, meetings were chaired by either Schutz or McIntyre.)

He initiated a discussion about the Respondent's antiunion philosophy and stated that he did not want a union because the employees did not need a third party to intervene in problems at Vemco and problems could be worked out internally.

Schutz testified that he implemented shift representative committees 7 years previously at other Venture Industries facilities and it was described in those employees handbooks as well as Vemco's. He also assert that it was not implemented after the June start of limited production because of start up problems and high overtime demands on employees.

Schutz' remarks about the Union at the first meeting allow an inference that he was aware of some organizational rumors. However, I am persuaded that he had already planned to implement the shift representative policy, consistent with past practices, and I conclude that the General Counsel has failed to show that the implementation of the committee was itself a violation of Section 8(a)(1) of the Act as alleged.

2. Alleged interrogation and plant closure threats

Fork truckdriver Rod Burnham worked under Supervisor Merandi in facia assembly and during November 1988 was questioned briefly at work by her about whether he knew anything about union activity in the shop. After he replied ''no,'' she stated that if a union came in the shop would shut down. On another occasion in February 1989, Shipping Supervisor Scott and Burnham argued over a problem that Burnham felt was being caused by the way management wanted inventory stocked. When Burnham commented that if it were a union shop they would not have the problem, Scott stated, ''Well its not a union shop and it never will be.''

Burnham was shown to have received reprimands on several occasions for argumentative type behavior but was not terminated then or on March 17 for this reason. He testified openly about the circumstances behind the reprimands and, contrary to Respondent's assertions, I observed that his demeanor on the stand was highly credible, whereas, I find that Merandi's demeanor and testimony demonstrates only a consistent effort to discount and minimize anything indicative of antiunion behavior and to justify the Company's actions despite an otherwise clear showing that she fully endorsed application of the Company's antiunion philosophy. I therefore credit Burnham.

On March 14, 1989, Masking Supervisor Patricia Hatch had dinner with employees Holly Wise and Laura Coppenhaver before going bowling. Coppenhaver initiated part of a conversation by asking Hatch if she were aware of union meetings. Hatch said she was and that she had suspected that meetings were being held for quite a while.

Hatch then asked where the meetings were held. When Coppenhaver said she did not know, Hatch said both their fathers did not think unions did any good, that she did not think a union would do the employees any good, that she had talked to Schutz about the Union, and said she wanted to be transferred out if the Union came in. Hatch then asked Coppenhaver if she had attended any union meetings.

Respondent argues that none of these statements constitute illegal interrogation or threats, asserting specifically that Hatch was merely expressing a personal opinion. Here, Supervisor Merandi not only abruptly questioned Burnham about union activity but followed the inquiry with a clearly illegal threat that the plant would close if the union came in, thereby creating a total climate that would reasonably tend to restrain, coerce, or interfere with employees' rights, consistent with the decision in *Rossmore House*, 269 NLRB 1176 (1984). Moreover, the questions about union meetings made by Supervisor Hatch, although arising in a social context, were accompanied by remarks that disparaged unions and indicated that she had suspected union activities and had talked to the plant vice president about it. Moreover, the remarks were made in front of Wise, one of the employees identified 3 days later with the delivery of the Union's letter naming the organizing committee. Finally, the questions occurred only 3 days before the mass layoff and on the same day that McIntyre had earlier informed Hatch that there were going to be layoffs and had told Hatch that she should think of prounion people for their discussion of who they wanted to select for layoff. Here, the questions so closely proceeded the layoff as to be fresh in Wise' mind, it was coercive in the context of the Respondent's subsequent layoff action, and I therefore find that the interrogations and threats are shown to be violative of Section 8(a)(1) of the Act, as alleged.

3. Alleged threats of discharge

In November 1988, employee James Brenner asked Supervisor Bard Scott for 3 days off for deer hunting. Even though employee Lee Dickerson offered to cover Brenner's shifts, Scott denied his request. When Brenner said ''if there were a union, things like this would not take place,'' Scott warned both men that they had better not let another member of

management hear them speaking about a union because they could lose their jobs.

Dickerson and Brenner had another conversation with Scott, in which Scott asked Dickerson why he was always complaining. When Dickerson said he realized that Scott made the decisions but that things would be different if Vemco had a union, Scott again stated that Dickerson had better not let another member of management hear him speak or talk about a union because he could lose his job.

During the first week of March, Supervisor Randy Porter approached employee Michael Harper in the molding department and told him that during his 5 years with the Company he had seen people lose jobs as a result of union activity and suggested that Harper keep his nose clean because he would hate to see him lose his job. Porter denied making this statement and went to great length to otherwise paint a critical picture of problems with Harper, including a 3-day disciplinary layoff for tardiness in November 1988. This occurred after Harper had called in on 3 consecutive days to explain that he would report late as he was with his 2 year old child who was hospitalized in an oxygen tent. He appealed the decision to then Plant Manager Joe Winget (the owner's son). The penalty of 3 days off were upheld, but changed to reflect a nondiscipline reason. I find that Porter's criticism of Harper tends to be pretextual and inasmuch as Porter otherwise appears to have given other testimony designed principally to support Respondent's position, testimony that I otherwise find not to be credible I credit Harper's testimony over Porter's bare denial. The testimony by Brenner and Dickerson is not rebutted (Scott is no longer employed by the Respondent) and I conclude that in each instances Respondent's supervisors are shown to have made statements that infringed on employees' rights to freely engage in union activities by implicitly threatening them with the loss of their jobs and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act in these respects, as alleged.

4. Alleged dissuasion of employees from seeking union representation

On February 23, 1989, Supervisor Scott responded to a statement by employee Burnham with a comment that, ''Well, its not a union shop and it never will be.'' This statement reasonably implies that any employee effort to join a union would be futile and also interferes with employee's rights in violation of Section 8(a)(1) of the Act, as alleged.

Also, on March 6, Team Leader Joyce Skaggs conducted a meeting of facia assembly employees in which an employee followed a discussion with a question to Skaggs about who he could contact in order to join the union organizing committee. Skaggs reacted sharply and said that the employees did not need a union, that there would never be a union at the Company, and that the Union was a bunch of drunk, lazy, drug users. The employee protested that he had worked for union companies and it was nothing like that, and Skaggs replied that if he did not like it the door was right there. Supervisor Merandi was present during this exchange and did nothing to disavow Skaggs' statements.

Skaggs' remarks are unrefuted and clearly would be of such a nature as to be a violation of the Act if they were spoken by a supervisor. Here, Respondent claims that Skaggs was an employee with First Amendment right of free speech which the Employer was bound not to interfere with and that accordingly, Merandi's nonresponse was consistent with an obligation of noninterference.

Here, although Skaggs was not a supervisor she was a team leader engaged in following the directives of management to conduct a team meeting and she did so in the presence of Supervisor Merandi. Skaggs acted as Respondent's agent and made representations that employees could reasonably believe were on behalf of the Respondent and reflected its nonunion policy. Skaggs' role as Respondent agent under Section 2(13) of the Act was not disavowed by the supervisor in attendance and Respondent is chargeable with the statements which reflect a violation of Section 8(a)(1) of the Act, as alleged. See *Futuramik Industries*, 279 NLRB 185 (1986).

5. No-solicitation rule and alleged threat of repimand for any violations

On March 15, 1989, Supervisor Hatch met with 30 to 50 masking department employees. Virginia Black said she asked why her name had come up in a conversation about union talk away from work (the restaurant meeting noted above on March 14). Vicki Gullett and Sherry Brown recall that Hatch had asked about the rumor about layoffs and about her trying to obtain a list of employees involved in union organizing. Gullett asked Hatch why she did not question Coppenhaver, who was setting right next to her. Hatch responded that Gullett should mind her own business because she had no idea what was going on and then stated that the business with the Union was ''old shit'' and that any more rumors of that kind would result in employees being written up.

Hatch testified that she was tired of all the rumors and wanted them to stop and get back to normal work. She denied mentioning the Union, and some others in attendance did not recall ''unions'' being mentioned. However, Black testified that Hatch responded to her question by denying that her name had come up, and saying that she had heard rumors about a union and did not want to hear any more about it as it was old news. Hatch admits that she said ''if *these rumors* don't stop,'' that verbal warnings would be issued, an admission that is plural in nature and I credit the testimony that indicates that Hatch spoke about ''union'' rumors as well as layoff rumors when she instigated her rule and threatened to issue warnings. This rule was not limited to worktime or in any other way. It is so broad as to forbid any discussion about the union among employees, unrelated to any enforcement of Respondent's no-solicitation rule, under pain of discipline, and I conclude that Hatch's statement interferes with employee's rights and is a violation of Section 8(a)(1) of the Act, as alleged.

D. *Alleged Preelection Violation of Section 8(a)(1)*

1. Promise and distribution of jackets

Respondent planned to give jackets to employees for an open house in late 1988 or early 1989 and employees were aware of the plan at the time. However, the jackets were not provided until approximately a month before the election. Here, the timing of distribution of chits for the jacket on the payday preceding the open house held August 5, only a few weeks prior to the election, clearly lends itself to the appearance that it was illegally calculated to influence the employ-

ees in their choice of a bargaining representative. See *Arrow Elastic Corp*., 230 NLRB 110 (1977). The General Counsel's allegations clearly are not ''patently frivolous'' nor indicative that the Regional Director was not acting in good faith, a charge made by Respondent of volume II at 70 of its brief, and I conclude that a presumptive or prima facie showing has been made tending to show that Respondent's action was unlawful.

Accordingly, the burden rests on Respondent to rebut the presumption (or the General Counsel's prima facie showing) consistent with the criteria of *Arrow Elastic*, supra at 112. The Respondent has shown that its gift of jackets (valued at between $22 and $30 each), was tied into its originally planned plant dedication and open house, which was delayed and rescheduled in the ''Spring 1989'' because of its problems in keeping the plant running. The record otherwise shows that the open house finally was held on August 5 and that a so-called ''chit'' were given to the employees 2 days earlier. Various documents relative to the actual order from the supplier, however, are dated October 25, and November 1 and 3, 1989. Thus, it appears that the jackets were in fact not distributed to employees until after the election and well after the open house. Accordingly, it appears that a special effort was made just before the election to promise future jackets.

Here, although Respondent has shown a prior plan to provide employees with jackets, I am not persuaded that it has presented any credible testimony or evidence that would reasonably show that the ultimate implementation of the jacket benefit was timed to occur shortly before the representation election because of some actual and legitimate business reason rather than its desire to influence and thereby illegally interfere with the union campaign. Personnel Manager McIntyre's testimony provides no credible reason for Respondent's choice of August 5 for the open house and the plan to contemporaneously issue promissory ''chits'' to employees. Accordingly, I conclude that the promised gift of employee's jackets was implemented with the paychecks of August 3 because of the union activity and therefore unlawfully interfered with the election held September 23, in violation of Section 8(a)(1) of the Act, as alleged.

In connection with the latter discussion and with the following evaluation of the allegation of the complaint, it is observed that Respondent's arguments often emphasizes a claim asserting the minor or frivolous nature of the various alleged allegations. It is not necessary, however, that a respondent's independent preelection actions be flagrant examples of coercive interference in order to find a violation of the Act. Here, in view of Respondent's demonstrated willingness to proffer false testimony regarding its actions and reasons surrounding the mass layoff of March 17, and in the context of Respondent's overall pattern of improper conduct, I find that Respondent has revealed its willingness to repeatedly test the limits of permissible conduct regarding interference with the rights of its employees. In the instance discussed above, the Respondent has crossed the line of permissible conduct and it does not matter that in any particular instance it may have done so by a lesser rather than a greater amount. Here, the cumulative effect of Respondent's apparent refusal to acknowledge the legitimacy of its employees' Section 7 rights under the Act demonstrates a pattern of consistent action whereby its overall conduct in furtherance of its antiunion philosophy has repeatedly crossed the line and illegally interfered with a union organizational campaign.

2. Alleged threat of plant closure and impression of surveillance

On March 21, after the layoff, management conducted a meeting with approximately 25 employees in the training center. Employee Betty Battle testified that Schutz read aloud from a memorandum distributed to the employees and spoke about the startup of Vemco's operations and about the Union as a third party that wanted to make money for itself and was not concerned with the employees and, in doing so, he said that, ''if anything they would cause the company to close down.''

Company Attorney Robert Morgan was present during the meeting and testified that Battle asked Schutz a number of questions regarding benefits and plant closure and that Schutz responded by saying, ''We have no present plans to shut down whether the union gets in or doesn't get in.'' Several other witnesses said no statements were made regarding plant closure if the Union got in and several others denied hearing a statement phrased in the manner Battle recalled.

Battle was an open union supporter and I conclude that she ''understood'' Schutz' remarks to be a plant closure threat and testified as to her ''understanding'' rather than a recall of the actual words used. Her testimony is uncorroborated and I therefore credit the contradictory testimony of those witnesses that stated Schutz' remarks were not phrased as stated by Battle. Accordingly, although Schutz made remarks that were susceptible of misinterpretation, especially in the context of the mass firing a few days earlier, I am not persuaded that he used the specific language attributed to him by Battle or language that would unequivocally show a threat of plant closure tied to the union campaign and I conclude that the General Counsel has failed to show that the Respondent violated Section 8(a)(1) of the Act in this respect, as alleged.

At this same meeting on March 21, Schutz stated that he had heard from some employees that the UAW supporters had been intimidating employees into signing ''green cards.'' He stated that such acts are illegal and offered to contact the Company's attorney in order to stop the union's activities.

The General Counsel cites the decision in *American National Stores*, 195 NLRB 127 (1972), which states:

> We are not here concerned with whether this statement was true, or whether it proved actual surveillance. The significant fact . . . is whether [the supervisor's] statement had a reasonable tendency to discourage the employees in exercising their statutory rights by creating the impression that he had sources of information about their union activity.

The General Counsel argues that Schutz' statements suggest that he had sources of information regarding union activities. Here, I am persuaded that Schutz' remark that ''he had heard from some employees'' reasonably could suggest to all employees that he had sources that would report to him about any union supporting employees who were observed seeking union authorization signatures. Accordingly, the pronouncement of this statement to a large group of employees reasonably tends to interfere with the rights of employees to seek

union support as well as the rights of employees to freely sign authorization cards, and I find that it is a violation of Section 8(a)(3) of the Act, as alleged.

3. Alleged threat of additional layoffs

On July 21 (during the first week of the hearing), Respondent issued a press release during the course of a news conference which involved both print and television media. This press release states:

> The layoffs we made were permanent. If we had to bring back the people we permanently laid off, as the Union wants, the answer seems to be that since we cannot afford 60 extra people, another layoff would be made out of our present work force. And even though this presents problems since many of our people have common dates of hire, the Union would want us to do this by seniority and that is probably what we would do.

This part of the press release was quoted in its entirety in a newspaper article in the Flint Journal, on Saturday, July 22.

During the media conference, Respondent's attorney, Sheryl Laughren, made a similar oral statements to a television reporter in which Laughren said that if the National Labor Relations Board ordered the return of the laid-off employees, the Respondent would have no alternative but to turn around and lay off 60 additional employees which were presently working at the plant and that the layoff would be by seniority because ''this is the way the union would want them to do it.''

It is undisputed that Laughren was pictured on the local news and was broadcasted stating:

> It has been established that we had a legitimate business reason for making the layoffs that we did, regardless of any kind of unionization efforts that may have been going on, one way or another. [Exh. 115.]

It does not appear that any additional statements were broadcasted on the local news or heard by any Vemco employees.

On July 27 Schutz, as Respondent's executive vice president distributed a letter to its employees, which stated:

> If the Union gets its way and Vemco is required to hire back 60 of those people, the answer seems to be one of two alternatives. Since we do not have enough work for an additional 60 people on a fill-time basis either (1) we could try to keep everyone employed—working 3 or maybe 4 days per week, or (2) another lay-off would be made out of our present work force. And even though this presents problems, since many of our people have common dates of hire, the Union would want us to do this by seniority and that is probably what we would have to do.

Respondent argues that because only the union representative and no employees heard Laughren's full statement no alleged threat was made. It would appear, however, that the television crew heard the statement and that the context of the press release was broadcasted (and published in the newspaper), regardless of whether Laughren's taped remarks were broadcast in full and Laughren clearly endorses, and does not disavow, the release. Accordingly, Respondent's alleged threat was communicated to the public and Respondent's employees through the media coverage of the press release and through Schutz' letter to employees.

Despite Schutz' claim that his letter was an attempt to answer employee's questions about additional layoffs, the statements must be evaluated in the context of the Respondent's actions in precipitously and illegally making the March 17 layoff, as well as the continuing organizational campaign and the Union's July 13 petition for an election. The implicit message conveyed by the remarks is that another 60 persons from the present work force would be laid off if the Union had any say in the matter. This in effect is a threat that if employees vote for the Union and thereby give them some say in the matter, 60 additional people probably will be laid off. This conduct clearly interferes with, restrains, and coerces employees in the employees' exercise of their rights to support or not to support a union and I find that it violates Section 8(a)(1) of the Act, as alleged.

In mid-September Respondent distributed a question and answer sheet to employees which purports to be answers to questions by employees. Answers 44 and 99 were as follows:

> A44. The union will not force the company to do anything it doesn't want to do or cannot afford to do. If 60 employees were brought back 60 other employees would likely end up on the street. That does not appear to be the kind of job security our current work force deserves.
>
> A99. We cannot say what would happen, but to answer your question the seniority date is November 8, 1988. We will supply several copies of the seniority list for employees to review.

Schutz testified that the questions were received from employees anonymously who put them in question boxes in employees breakrooms. Respondent asserts that its answers are permissible predictions of probable consequences predicated on reasonable interpretations of facts. Here, however, it appears that it may reasonably be interpreted that shortly before the election, Respondent seized on the vehicle of anonymous questions to provide answers that emphasis and reiterate the same message and same threat regarding added layoffs that was contained in his earlier letter and ''news'' publicized after the Company's press release.

Three other questions and answers collectively presented the following alleged threat:

> Q66. I was once a part of organizing a union, lost my job, my house and my car and the company close its door for a month open up with new employees and got away with it. Could this happen here?
>
> A66. Yes it could. A good example is Kessels.
>
> Q87. In reference to your answer on question 66—Why are you trying to scare your employees?
>
> A87. It is not a scare tactic. It is the law.
>
> Q95. It's not a fair comparison to compare a grocery store (Kessels) with an automotive supplier (who is obligated to fulfill contracts with GM). It's like comparing apples to oranges, don't you think? Kessels is not obligated (by contract) to provide services to anyone.

A95. The question referred to a Company's legal right to close its doors and another Company open up with new employees with a different name. The law allows companies to do that no matter if its in the grocery industry or the automotive industry.

The clear import of Respondent's answers is that it can legally get away with closing its plant in the face of an union organizational drive and thereafter reopen with new employees, a response that goes well beyond a reasonable interpretation of law and facts, ignores well-established decisions where illegally motivated plant closures have been found to be unlawful (for example, see *Mid-South Bottling Co*., 287 NLRB 1333 (1988).) Respondent unequivocally asserts that it could legally close and then be reestablished. This is beyond the permissible prediction concept of *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), relied on by Respondent, and I find that in each instance set forth above Respondent is shown to have illegally threatened employees with layoffs or plant closure and has violated Section 8(a)(1) of the Act, as alleged. See *Mark I Tune-Up Centers*, 256 NLRB 898, 906 (1981).

On the day of the election, Schutz had a conversation with some employees in or near the breakroom. Two employees who were not part of the conversation testified that they heard some of what was said and that Schutz said something about shutting the plant if the Union got in. Schutz testified about the subjects he discussed and denied any plant closure related remark. Inasmuch as it is not clear that those who heard the alleged remarks were in a position to accurately hear what was said and no employee participants in the conversation otherwise corroborated their testimony, I am not persuaded that on this occasion Schutz made any specific additional plant closure threats and I find that the General Counsel has failed to show that Respondent violated the Act in this respect, as alleged.

4. Alleged threat of harsher personnel decisions

Hatch testified that during a weekly team meeting with her employees in late August or early September, she discussed unionization with her employees, explained that she was concerned with the union literature in the plant and told them that: ''Everything that is offered to all of our employees at the plant could be subject to negotiations such as wages, benefits, everything that is offered to them right now presently.''

Employee Kimberly Hardin credibly testified that Hatch said if the Union comes in, that ''we risk losing our benefits that we now have,'' and she interrupted her and said ''that is not true. We do not risk losing our benefits that we have, that we start from this point on,'' and Hatch responded that it was her understanding ''that everything is put on the bargaining table, and in order to gain something they have to take something from us in exchange.'' Respondent argues that Hatch merely described the negotiation process, but her remarks were interpreted by employee Linda Brown to imply that if the Union came in they would no longer have benefits.

Both Brown and Hardin also recalled that Hatch then said if the Union came in the employees would just be numbers to her and she would not be able to deal with them on a personal level as individuals and take into consideration problems, for example, like seeing your children off to school. Here, the latter statement takes Hatch's discussion with her employees beyond the stage of permissible discussion and clearly threatens a retaliatory loss of benefits, specifically supervisory discretion and consideration in dealing with child care problems if the Union comes in. This threat implies harsher personal decisions and is an unlawful interference with employee's rights in violation of Section 8(a)(1) of the Act, as alleged. See *Brunswick Corp*., 282 NLRB 794 (1987).

5. Alleged promise of benefits

As noted above, in early September Respondent made use of employee question boxes and a question-answer format[1] to disseminate information about election related matters to employees.

The General Counsel argues that these answers promise benefits that were not previously granted, specifically recall rights, a system of job postings, weekend overtime notice, and use of seniority. Respondent contends that its 1988 handbook describes a job posting procedure and explains that it was not initially implemented because employees were untrained and had not learned their functions. It also asserts that the procedure was activated in July and communicated

[1] Specific questions and answers pertaining to these allegations are set forth below.

Q6. I've been wondering since we worked so hard to get the Target of Excellence award if and when there is a lay-off if the people that worked so hard will be called back?

A6. We do not intend to have layoffs; in fact we are looking at adding employees to fill in those areas where we are short. Today's permanent workforce would have recall rights if a layoff did occur.

Q26. Regarding the letter stating you hired temporary people. Are these people former laid off employees or are they from a temporary service? Could you please clarify temporary people?

A26. The temporary people you refer to are from an outside agency. We needed to fill positions quickly to insure more production in molding and to relieve some of the pressure in paint and assembly. When we determine the number of permanent positions to be filled, we will post the positions and give our permanent employees the opportunity to bid on the positions.

Q32. Why is the Company now going to post openings when they just told us a few months back that there would be no more posting of jobs? Last time they posted a job they hired from the outside.

A32. New work has created job openings. These openings will be posted to allow our current employees the opportunity to bid on these jobs.

Q38. Will seniority count in the persons department or overall Company seniority?

A38. In some cases department seniority would apply, for example: changing shifts or vacation scheduling. In other cases overall Company seniority would count.

Q52. How come overtime is never posted on the employee board in the Assembly Department? Or how come you never know ahead of time if we have to work over and post it before payday like most shops do? Because a lot of people make plans ahead of time for weekends.

A52. We agree, weekend overtime will be posted before 12:00 noon every Thursday.

Q41. (Omitted)

A41. A union will not solve this problem, it is the nature of our business. In order to help reduce employee frustration we will begin to notify employees of weekend overtime on Thursday mornings.

Q71. Why wasn't the job in Quality Posted?

A71. It was awarded from a posting. The runner up to the Quality job posted less than 1 month ago was awarded the job you are referring to.

Q74. Will seniority count in the persons department or overall company seniority and can people from other areas move into other areas?

A74. If you are referring to the posted jobs, seniority within a department will count along with ability, qualifications and others as outlined in the employee handbook.

to employees in shift representative meetings and by the posting of minutes of the meeting.

Here, I find that the timing of the implementation of the job posting practice, well after the asserted normalization of production in March 1989, and shortly before the scheduled election, supports an inference that the action was illegally motivated and designed to interfere with employees free choice to select or not select the Union as their bargaining representative. This conclusion is reinforced by the apparent failure of its alleged July communication of its new policy to generally reach employees as evidenced by the several questions from persons unaware of it, and by the lack of any reference in its answer to the handbook policy (with the qualification that answer 71 on seniority does refer to the handbook).

Respondent also assert that seniority has always been a factor and is mentioned in the handbook. These past references to seniority, however, were qualified as follows:

> Seniority does count in our corporation, however, Vemco is a very young company and therefore *other criteria are more strongly weighted* regarding layoff decisions.
>
> It is the length *and quality* of previous experience with the company. [Emphasis added.]

Clearly, seniority was not a criteria of the March 17 permanent layoff or was it in effect prior to the start of union activity; however, Respondent's answers just before the election tend to imply that seniority will be afforded more consideration than before and it therefore constitutes the promise of an added benefit.

With regard to notice of weekend overtime, it appear that although the Company had a handbook policy that it would ''attempt to give you advance notice,'' its past practices (due at least in part to production problems), generally precluded a specific policy. In September, a change was promised and implemented to commit the Company to give notice by Thursday morning as well as to post the schedule.

Finally, recall rights were promised to ''todays permanent workforce'' if layoff occurred, a policy that Respondent has specifically denied those permanent workers who were laid off on March 17, and therefore it is a promise of a new benefit that draws a distinction between current employees and those laid off under circumstances tied into allegation of antiunion motivation. Accordingly, it and the other answers discussed above, as well as Schutz' letter to employees on September 7, which also promises a system if job postings, are shown to be intrusive promises that interfere with and dissuade employees from unionizing in violation of Section 8(a)(1) of the Act, as alleged.

On the day of the election, at lunchtime after the first shift employees voted, Schutz had a casual discussion with some employees in the breakroom. Employee Battle's recalled that:

> One of the employees asked Mr. Schutz about their work schedule, which he told them they weren't satisfying the customers because they're supposed to produce parts and have them out within a five day period. So he said he had accomplished giving them Sundays off, and he would try to work on letting them have the entire weekends off.

Schutz testified that:

> I said it certainly was not the intent of the company to want to have to work people long hours, six, seven days a week. That it was better for all of us if we could be working a five day week and sometimes a sixth. But due to our type of industry, we have to meet our customer's demands.

When asked by Respondent's counsel his specific answer to the employee's question, Schutz began a nonresponsive answer about what he ''tried'' to do. I conclude that he did tell the employees that he would attempt to reduce the work schedule to a regular 5-day week. Although such a promise, standing alone, might appear to be an innocuous comment, as suggested by Respondent, it was made on election day and in the context of an extensive antiunion campaign accompanied by other unfair labor practices and, accordingly, I find that the circumstances warrant a finding that it also was a promise of a benefit which violates Section 8(a)(1) of the Act, as alleged.

6. Alleged withholding of pay increase

An employee was told that he had not previously received a raise (based at least in part on a change in classification) ''because a merit raise would have looked like they were trying to bribe him against the Union.'' No testimony was adduced to indicate that it was because of the employee's union support as stated in the complaint and, accordingly, I find that the General Counsel has failed, in this instance, to show a violation of Section 8(a)(1) of the Act, as alleged.

7. Alleged confiscation of union literature

Employee Suzanne Stevens placed union literature in the paint department breakroom on several occasions during the union campaign and did so specifically on September 14, shortly after 7 p.m. Thereafter, Stevens passed the breakroom and observed George Diamond, a hired consultant (and Respondent's agent), throw materials similar in appearance and quantity to what she earlier had placed there, in the trash bin. On her next break she found antiunion material still on the table and her union literature in the trash. Here, the circumstances described clearly are adequate to reasonably show that it is highly probable that Diamond was throwing her union literature in the trash when he was observed and I find that it was not incumbent on employee Stevens to confront Respondent's consultant in order to positively prove what occurred.

Diamond was not called as a witness but otherwise Respondent asserts that because Steven replaced the literature a few hours later and because the plant was ''brimming'' with union literature, the absence of that literature at a time when no breaks were scheduled was de minimis and had no impact on the election, Stevens' unrefuted observations clearly are sufficient to support a conclusion that Respondent's agent illegally took and threw away union literature, an action that violates Section 8(a)(1) of the Act as alleged, and an action which adds to the cumulative weight of Respondent's varied and numerous violations and takes it beyond a possible description as de minimis misconduct.

8. Alleged solicitation of grievances

''Joe'' Winget (son of Owner Larry Winget) returned to his position as Respondent's molding plant manager in September 1989 after several month at another facility in order to deal with ''technical'' problems that had developed. On September 18 employee Terry Dungey, a union supporter who was listed on the original organizing committee letter, was approached by Joe Winget while in the breakroom on her break. Winget asked how she was doing and then asked ''is there anything I can do to change your mind.'' When she said no he asked if she would like to go to his office and talk about it and she again said no. Two days later when she passed his office Winget again asked if there was anything he could do to change her mind. Dungey was wearing a union shirt and hat and was aware that Winget had been talking to other employees about next week's election and she therefore believed that Winget was talking about her union position and the union election, Winget admitted that he asked ''several of the hourly employees what their problems were, what could Vemco do to correct these issues and make life easier for them.'' He also recalled a breakroom conversation with Dungey where he light heartily offered to wear her union button if she wore his union-free button but did not recall anything more of the conversation.

I credit Dungey's testimony and I further find that it is not speculative under the circumstances to conclude that Winget's statements referred to the Union election and that such statements reasonably may be considered to be a solicitation of employee grievances with the implication that something would be done to remedy the grievance. The statements occurred just prior to the election and therefore are shown to interfere with employee's rights in violation of Section 8(a)(1) of the Act, as alleged.

9. Alleged illegal interrogation

In addition to the above-noted exchange between Winget and Dungey, employee Angela Hoskey (laid off on March 17 but reemployed on August 22) had a similar exchange with Winget regarding the wearing of her union hat if she wore his ''union-no'' button. Employee Kendra Wilcox had a similar exchange with Supervisor Brad Mann and Mann asserts that the interchange was done in a friendly manner. In *Houston Coca Cola Bottling Co.*, 256 NLRB 520 (1981), the Board found that by ''offering the Vote NO buttons and observing who accepted or rejected them,'' Respondent ''in effect polled the employees about their sentiments regarding the Union.'' Here, Respondent has made known its antiunion sentiments and previously had engaged in retaliatory and coercive conduct, especially when it suddenly made the mass layoff on March 17.

In this context, the masking of the interrogation in the form of a ''word game'' fails to dispel the message received by the employee, a message that Respondent's conduct in this respect was not a joke but a veiled interference with the Union's election in furtherance of Respondent's antiunion sentiments and it therefore is shown to violate Section 8(a)(1) of the Act, as alleged. A separate interrogation allegation is centered on the observed conduct of Supervisor Paul Jackson, however, the record only shows that he placed some ''Union free'' hats on the employees' table at lunchtime. He then left without comment and I find that his actions fail to demonstrate a violation of the Act in any respect.

E. *Alleged Violations Involving Employee Hall*

Greg Hall was an active union supporter, a member of the union organizing committee from its inception, and the close friend of Human Resources Assistant Debbie Reed prior to the March 17, 1989 permanent layoff. Hall credibly testified that in late June Matt Winget, another son of Owner Larry Winget, called Hall to his office and engaged in a discussion about unions. Winget said that Supervisors Greg Blasen and Gary Miron had complained to him about his talking about the Union. Winget said he wanted it stopped, asked him not to talk about the Union in the breakroom and Hall responded, ''okay.'' In response to questions on cross-examination, Hall said that after about 2 weeks he continued to write prounion letter as to talk about the Union in the plant, explaining that management had just asked him to stop in the breakroom.

Respondent argues that the effect of Hall's proscription was nil and de minimis; however, Winget's request to Hall constitutes an overly broad no-solicitation rule and is shown to be a violation of Section 8(a)(1) of the Act, as alleged. It also is another cumulative violation that goes beyond de minimis conduct.

Employee Barbara (Coons) Tincher credibly testified that in late August she came within 6 to 10 feet of Supervisor Randy Porter just as he made a statement to Third-Shift Foreman Greg Asbury that if ''this union shit don't get through, I'm gong to get rid of Greg Hall and all the other Greg Halls.''

In September, Charles Stearns was an employee working under Greg Asbury. Subsequently, he was made a second shift supervisor. On or about September 11, he was in Porter's office when Hall and Porter exchanged some comments about union activity and Porter told Hall to leave the office. A half hour later Stearns was near Porter when Hall came into view and Porter stated to Stearns that ''if the vote didn't go through then he would—he was going to see to it that Greg Hall and everybody that was like him was terminated from their job.'' In late September, Joe Winget questioned Stearns in front of Porter and asked if it was true that Porter has said that if the Union did not go through he would see that Hall was terminated and Stearns reaffirm that it was ''exactly'' what Porter said. Porter unpersuasively denied making the threats directed at Hall and testified that when Stearns was confronted by Winget he questioned Stearns further and Stearns said ''well you might not have used those words or exactly said it that way.'' Respondent seizes on that testimony and argues that it shows a recantation by Stearns, however, I find that if anything, it shows that after stating his recollection he politely qualified his statement with the words ''might not'' and ''exactly'' in order to avoid further antagonizing a supervisor. The testimony by Tincher and Stearns, although directed at separate incidents, is corroborative in nature as it shown Porter's propensity for making threats against Hall, threats that are shown to be a violation of Section 8(a)(1) of the Act, as alleged.

The election was held on September 22, during the week of Hall's vacation. Two days after his return to work Supervisor Randy Porter called Hall into Matt Winget's office and, in the presence of Greg Asbury and Charles Stearns (who

was present at Hall's request), handed Hall a 3-day suspension signed by Asbury and Matt Winget. Porter then called security to have Hall escorted out of the plant. The suspension was allegedly given to Hall for falsifying his timesheet on September 17, 1989. Hall asked to speak to Molding Supervisor Matt Winget and with permission granted by Asbury, Hall called Winget at home. Winget told Hall that he was unaware of the suspension until 7 p.m. that day and to come back the next day and talk to him. Hall was then lead out of the plant by plant security.

Hall returned the next day and discussed the details of his work hours on the day in question with Matt Winget. An appointment was arranged for Hall to meet the next day with Plant Manager Joe Winget.

At the meeting with Joe Winget, Hall explained that there was no way he was 45 minutes late on September 17 and could prove that he had worked a full 8-hour shift. He argued that he would not steal any time and had often worked more hours than he wrote down. Winget said ''it didn't matter, the write-up was going to stick, because of Hall's attitude, more than anything else.'' When Hall asked ''why don't you write me up for my attitude?'' Winget said ''it was too much of a gray area'' and that ''if I improve my attitude, I will never hear from him again.''

After serving his 3-day suspension, Hall returned to work. On the second day after his return to work, Hall purposely arriving late and noted it on his timecard. His reason for the late arrival was to prove to Respondent that he would not steal from the Company. Subsequently, Hall was given a written warning for being late.

Respondent contends that it received a complaint from an employee on another shift about having to cover for Hall at the time of the shift change. Respondent asserts that Joe Winget investigated the complaints by speaking with three employees and the supervisors in the molding area and was convinced that Hall had been repeatedly reporting to work significantly tardy and had been falsifying his timesheets.

As otherwise discussed above, the record in this case clearly has demonstrated union animus and the record further shows that Hall was identified as a prominent union supporter and was closely connected with the events leading to Respondent's premature and illegal mass layoff of employees on March 17. He also is shown to have been the subject of specific threats of reprisal by Supervisor Porter and I find that the General Counsel has made a prima facie showing that Hall's union activities were a motivating reason for its decision to suspend him and to give him a warning for tardiness. Respondent's defense, under its *Wright Line*, burden, supra, is based on claims that Hall was continually tardy and never marked his timesheet and that he was properly disciplined under company's handbook rule 6—''Falsification of any Company records, including employment application, time cards, insurance applications, etc.''

Here, I conclude that Respondent's asserted reasons are pretextual and essentially demonstrate an after the fact rationalization to justify Porter's premeditated retaliation against Hall, in fulfillment of his boast to do so if the Union did not get selected, just days after the apparent vote went against the Union.

The testimony established that the employees are on what was referred to during the trial, as a honor system. The employees were not required to punch a timeclock or mark on the timesheet their starting or quitting times. The procedure required employees to indicate on the timesheet the total hours worked on any given day. It also appears that company practice was that ''if you come in late and you worked over, as long as you did your shift, you were all right,'' the rule was treated with a great deal of flexibility (established when employees were working long overtime hours) and employees were not usually disciplined except under extreme circumstances.

The discipline also was issued by and originated with Porter, who was not Hall's shift supervisor, while the suspension was signed by Supervisor Asbury and Molding Supervisor Matt Winget, who admittedly did not investigate Hall's possible explanation prior to the suspension, specifically Hall's description of a period of confusion when the shift change time varied in the molding department which affected Hall's relief of the second shift employee he replaced, the employees who initially complained. And, when Hall finally explained his side of the story, Joe Winget told him it did not matter, that he really was being disciplined for his attitude.

On brief, Respondent argues that its discipline of Hall was a proper business action that was required to send a message about tardiness to all employees. Respondent, however, did not choose to discipline Hall for tardiness but instead chose the strained concept of ''falsification of Company Records,'' and no apparent effort was made send its asserted message through the medium of its regular shift representative meetings or through the initial issuance of a warning, the form of discipline selected for Hall's discipline after the initial suspension.

Under the circumstances, it is clear that the message sent by Respondent was not about tardiness but about union activism and I am not persuaded that Respondent was motivated by a valid, nondiscriminatory reason for its suspension and subsequent warning to Hall and I conclude that the General Counsel has shown that Respondent violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

F. *Election Objections and Request for a Bargaining Order*

In consideration of the nature and extent of Respondent's unfair labor practices discussed above, it is concluded that the General Counsel has shown that Respondent's threats, surveillance, interrogations, etc., and the illegal termination of 60 employees including 17 union activists (as well as others who signed authorization cards) were effective in dissipating the Union's majority support and in affecting the outcome of the election subsequently held on September 22, 1989.

The record shows that 187 of 292 employees in the appropriate bargaining unit as of April 29 had signed union authorization cards. The Employer challenged 52 ballots cast by employees who were among those permanently, but illegally, laid off on March 17. The Union otherwise received 127 votes, with 141 cast against the Union; thus, the counting of the 52 challenged ballots could affect the result of the election.

Although it is possible that Respondent would have had some reduction in staffing levels at some date after March 17, it would be nothing more than conjecture to speculate regarding who or when. Moreover, there is evidence of record indicating that Respondent failed to pursue Ford's business

at this same time, and that it falsely blamed the loss of Ford's business for the necessity of layoffs. The Respondent should not be placed in a position where it benefits from the consequences of its illegal conduct. Moreover, there is no question here of a reasonable expectation of recall,[2] and there is no showing that some determinate number or some determinate individuals would not have been on the April 29 list of bargaining unit employees, in the absence of Respondent's illegal conduct in effectuating the mass permanent layoffs on March 17.

Here, I conclude that the ballots of the 52 employees illegally terminated on March 17 should be counted and that the challenge to these ballots should be overruled.

Under the holding of the Court in *Gissel Packing*, supra. a bargaining order is an appropriate remedy for violations of Section 8(a)(1) and (3), where it is shown that a union obtained signed authorization cards from a majority of the employees in an appropriate unit and after the union had attained majority status the employer embarked on a campaign of illegal conduct which undermined the union majority status and made a fair election impossible. Here, a clear majority of employees signed cards as of April 29 and the Union filed a representation petition on July 13. During this period of time, and continuing up to the day of the election, the Respondent followed the mass permanent layoffs and a series of earlier antiunion actions with numerous violations of Section 8(a)(1) of the Act, including surveillance, interrogation, threat of additional layoffs, threat of plant closure, and promise of benefits.

The impact of these unfair labor practices was heightened by that fact that the persons involved in the conduct often had special stature through their position as plant manager, company attorney, or sons of the company owner.

I conclude that these factors were sufficient to undermine the Union's majority status. A bargaining order is an especially necessary remedy where terminations such as those involved here constitute an unmistakable message to the remaining employees about the probable results of open support for a union. I further find that Respondent's action clearly undermined the Union's majority status and, especially in view of the Respondent's postelection retaliatory disciplinary against union activist Hall, that no mitigating circumstances are shown that would indicate that a fair second election is possible and, accordingly, a bargaining order is shown to be justified.

Based on the ruling pertaining to challenged ballots it is now possible that the Union may receive a majority of the votes. Regardless of this outcome, however, it is necessary and appropriate to grant a bargaining order inasmuch as appellate procedures could result in delays or another conclusion and because, given the gravity of Respondent's misconduct, the Union's card majority provides the more reliable test of employees' desires than a contested election.

Otherwise, I also conclude that it is shown that objectionable conduct by Respondent occurred between the filing of the representation petition and the date of the election and the Board had found that violations of Section 8(a)(1) that occurred during such period are sufficient to warrant overturning an election. See *McLean Roofing Co*., 276 NLRB 830 (1985), enfd. 794 F.2d 679(T) (8th Cir. 1986), and cases cited therein.

[2] Otherwise, the record does reflect some ambiguous conduct on behalf of the Respondent in which it solicited and effectuated the so-called ''rehiring'' of several of the allegedly permanently laid-off employees.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit appropriate for collective bargaining is:

> All full-time and regular part-time employees employed by Respondent at its facility located at 10230 N. Holly Road, Grand Blanc, Michigan; but excluding office clerical employees, professional employees, confidential employees, sales employees, draftsmen, guards and supervisors as defined in the Act.

4. By interrogating employees concerning their union sympathies and activities or those of other employees; by creating the impression of surveillance of employees' union activities; by imposing an overly broad no-solicitation rule; by confiscating union literature; by threatening employees with plant closure, additional layoffs, discharge, reprimand, and the imposition of more onerous working conditions; by implying that efforts to join a Union would be futile; by soliciting grievances; and by promising benefits, including the distributing jackets Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. By terminating 60 bargaining unit employees on March 17 because of their union activities (including specifically, the delivery of a letter identifying the members of the union organizing committee) in pursuing union affiliation for purposes of collective-bargaining representation, Respondent violated Section 8(a)(3) and (1) of the Act.

6. By issuing warnings to and suspending employee Greg Hall and more strictly enforcing timekeeping rules because of or in retaliation for the employee's activities in pursuant of union affiliation, Respondent has violated Section 8(a)(1) and (3) of the Act.

7. The employees named in the attachment to the appendix who otherwise were not rehired were eligible voters as a result of their unlawful termination and the challenged ballots of those who voted in the election on September 22, 1989, should be counted, resulting in the issuance of a new certification in Case 7–RC–1935.

8. The unfair labor practices found above were independently, substantially, and pervasively disruptive of the election process, preclude a fair election, and warrant an order to bargain.

9. Except as found here, Respondent is not shown to have engaged in any other unfair labor practices as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Inasmuch as I have found that Respondent violated the Act by terminating 60 bargaining unit employees through its permanent layoff, I find it necessary to order that Respondent be required to reinstate these employees in order to restore the status quo ante existing prior to its commission of this unfair labor practice. The Board has long held that restoration as nearly as possible of the situation that would have prevailed, but for the unfair labor practice, is prima facie appropriate and that the burden rests with a respondent to demonstrate that it is not appropriate. See *R & H Masonry Supply*, 238 NLRB 1044 (1978); and *Rebel Coal Co*., 259 NLRB 258 (1981).

Respondent makes some attempt to show that events such as productivity improvements and reductions in orders resulted in subsequent reduced manpower needs, such that future, justifiable layoffs would have occurred in any event. This position, however, flys in the face of evidence of record which shows that Respondent took contemporaneous, unilateral, and apparently precipitous action in discontinuing attempts to obtain potential Ford Motor Company's business, that it subsequent engaged in expansion of its facilities, that it hired or rehired some additional regular full-time employees, and that it began a program whereby it made extensive use of full-time temporary employees to fill additional manpower needs in bargaining unit positions.

Respondent has not shown specifically that the economic consequences of an order requiring reinstatement and backpay would be unduly burdensome, and, under the circumstances of this case, Respondent must accept the responsibility for its precipitous and illegally motivated decision to effectuate a massive termination by its so-called permanent layoffs.

The consequences of Respondent's disregard of its statutory obligations, namely the restoration of the status quo when the Respondent took unlawful action to the detriment of its employees, must be born by the wrongdoer and, accordingly, reinstatement and full backpay running until such time as an offer of reinstatement is tolled is appropriate and should be required See *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate all employees terminated on March 17 to their former jobs or, substantially equivalent positions (dismissing, if necessary any so-called temporary employees or employees hired subsequent to March 17, 1989), without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them by payment to them a sum of money equal to that which they normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),[3] and that Respondent expunge from its files any reference to their termination and notify them in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel action against them.

It also is recommended that Respondent be ordered to make Greg Hall whole for any loss of earnings he may have suffered because of the discrimination practiced against him by payment to him a sum of money equal to that which he normally would have earned on the days he was suspended in accordance with the method set forth above and that Respondent expunge from its files any reference to Hall unlawful warning and suspension and notify him in writing that this a has been done and that evidence of this unlawful discipline will not be retained in its files or disseminated in any manner.

Because of the serious nature of the violations and because Respondent's egregious misconduct demonstrates a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act, *Hichmott Foods*, 242 NLRB 1357 (1979), and to bargain with the Union.

Inasmuch as Respondent engaged in misconduct that resulted in the challenge of 52 ballots, which challenge is not sustained here, it also is necessary that these ballots be counted and that there be a new certification in Case 7–RC–19035.

It is also recommended that the Respondent be required to recognize and bargain with the Union and, if agreement is reached, to reduce the agreement to a written contract. Furthermore, Respondent shall not subsequently lay off any reinstated employee for any valid, nondiscriminatory business reason without providing such employee 60 days' notice (a period consistent with the provision of Public Law 100–379, the Worker Adjustment & Retraining Notification Act, 102 Stat. 890), and inasmuch as a bargaining order is found to be required here, the Respondent otherwise shall not unilaterally layoff employees without providing the Union with notice and opportunity to bargain about the decision to lay off employees and the effects of that decision.

[Recommended Order omitted from publication.]

[3] Under *New Horizons*, interest is computed at the Short-term Federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp*., 231 NLRB 651 (1977).